

**Counties — Officers — New Counties — School Districts —  
Superintendent of Schools—Appeals.**

Upon the creation of a new county the officers of the old county retain jurisdiction of the territory included within the new until it has been fully created.

An appeal from a decision of a county superintendent upon a question of the creation of a school district in territory included within a new county must be taken to the board of county commissioners of the old county until such time as the new county is fully created notwithstanding that the county commissioners of the new county take office immediately upon the filing of the certificate declaring the result of the election.

Miss Amanda O. Swift,  
Superintendent-elect, Petroleum County,  
Lewistown, Montana.

December 31, 1924.

My dear Miss Swift:

You have requested an opinion relative to the right of the county commissioners of the newly created county of Petroleum to take up an appeal from the county superintendent on a division of a district, where it is desired to take an appeal.

This county was created by an election held November 4th. Under the statute a newly created county is not entitled to function until ninety days after the filing of the certificate declaring the result of the election and designating and declaring the persons elected for the several county offices.

The officers of an old county continue to exercise the functions of office over the territory included in a new county until the complete organization of the new county. (15 C. J. 405.)

It is true that the board of county commissioners assumes its office and is given authority to proceed to procure supplies and a suitable place for the county government but the enumeration of these powers would be exclusive of its exercise of any others until the county is fully organized. (Clark v. Goss, 12 Tex. 531.)

It follows that the county commissioners of the new county have no authority to pass upon the appeal from the county superintendent of Fergus county; the appeal lies to the county commissioners of Fergus county who still exercise jurisdiction over the territory included in the new county of Petroleum until that county is fully created and consequently over the division of this school district.

Very truly yours,

L. A. FOOT,  
Attorney General.